S.B.Criminal Misc. Petition No.442/2004
(Arvind Baleshwar vs. Smt. Pushpa Vyas

Date of order : 13.7.2006

HON'BLE MR.H.R.PANWAR,J.

Mr. S.K.Poonia, for the petitioner.

This criminal misc. petition is directed against the order dt. 23.3.2004 passed by Additional Chief Judicial Magistrate, Dungarpur (for short `the trial court' hereinafter) in criminal case No.23/2004, whereby during the pendency of the application filed by the non-petitioner under section 125 Cr.P.C. seeking maintenance, interim maintenance at the rate of Rs.450/- per month was granted in favour of non-petitioner.

I have heard learned counsel for the petitioner. Perused the order impugned as also the material placed on record.

Learned counsel for the petitioner submits that an application under section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed, which was allowed and the non-petitioner was directed to resume the matrimonial home but she failed to do and, therefore, she is not entitled. Be that as it may, it is the order granting maintenance and this question

can only be decided when the parties lead their evidence. At this stage, this question cannot be gone into. In the circumstances, therefore, I do not find any ground to interfere in the extra-ordinary jurisdiction under section 482 Cr.P.C. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of court.

In the result, the misc. petition is dismissed. Stay petition also stands dismissed.

(H.R.PANWAR),J.

m.asif/-